



M O N T A N A  
C O A L I T I O N   A G A I N S T  
D O M E S T I C   A N D   S E X U A L  
V I O L E N C E

January 19<sup>th</sup>, 2009

EXHIBIT 5  
DATE 1/19/09  
HB 176

To: House Judiciary Committee  
From: Kelsen Young, Executive Director  
Re: HB 176 – Expungement of Certain Criminal Records

Good morning, Mr. Chairman and Members of the House Judiciary Committee. For the record, my name is Kelsen Young and I am the Executive Director of the Montana Coalition Against Domestic and Sexual Violence. We are a statewide membership organization representing direct service programs from across the state that provide services to victims of domestic and sexual violence. We rise in opposition to House Bill 176.

HB 176 is problematic for several reasons, some of which have been addressed in other testimony to the committee. We generally support the amendments that have been offered by the Clerks of Court. Their amendments would at least maintain the criminal record information as “confidential criminal justice information”. But our fundamental concerns are not completely addressed by these proposed amendments.

Our concerns, as the entity that represents the interests of victims of domestic and sexual violence, are more extensive. Criminal cases against perpetrators of domestic and sexual violence unfortunately are often dismissed and deferred. This happens for a variety of reasons. In order to maintain the record of previous acts, it is important that the criminal justice system – prosecutors and police – have access to records of prior criminal history. These records are used to document long-term violence within a particular relationship or for offenders who we refer to as “serial abusers” who may move on from one abusive relationship to another partner. For sexual offenders, it is also very important for the criminal justice system to be able to reflect on the longer term behavior of the offender. If enacted as written, this statute would have serious impacts on the ability for prosecutors to hold offenders accountable and for victims to access safety within the justice system.

Granted, the proposed statute indicates that the request for expungement must be filed with the Court and it will be up to the Judge to decide if the record can be expunged. But there does seem to be a presumption for expungement.

In order to address our concerns, we have two proposed amendments we would appreciate the Committee consider. The first would be to clearly exempt from this proposed statute those cases that are resolved under a deferred prosecution agreement or a deferred imposition of sentence. It would need to be clearly stated that these two situations are not considered a dismissal or acquittal. Right now, if an offender agrees to a deferred sentence, eventually the case may be dismissed. Therefore, according to this statute the record could be wiped clean. When an offender agrees to a deferred arrangement they are basically admitting guilt. These agreements are routine in domestic violence cases and we need to maintain the record.

Secondly, we would request the Committee consider an amendment to add language that would exclude offenders charged with partner or family member assault and offenders charged with any sexual assault. Both of these proposed amendments could be added in new section 1.

Thank you for your time. I ask you to seriously consider the impacts of this proposed legislation on victims of domestic and sexual violence in your communities.

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